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January 22, 1998

DOCKET FILE COPY ORIGINAL

William E. Kennard

Chairman

Federal Communications Commission

1919 M Street, N.W.

Washington, D.C. 20554

*Ex Parte* Submission in MM Docket No. 87-268

Dear Chairman Kennard:

Our client, Midwest Television, Inc., is the licensee of KFMB-TV (Channel 8, CBS affiliate) in San Diego. As we explained in Midwest's reconsideration pleadings and during meetings with your office over the past few months, the Commission's DTV Table of Allotments/Assignments currently assigns DTV Channel 8 to KABC-TV in Los Angeles, an assignment which threatens KFMB-TV's continued ability to provide existing analog service to up to 25% of its viewers. This co-channel assignment violates the Commission's own spacing standards by 102 km (or 37.3%). Because both KFMB-TV and KABC-TV stand to suffer substantial service losses as a result of this short-spacing, both filed petitions for reconsideration on June 13, 1997 opposing KABC-TV's DTV assignment, and both subsequently supported the alternative channel assignments (the "Improvements") proposed by MSTV, NAB and other broadcasters in an *ex parte* submission of November 20, 1997.

It came to our attention yesterday that coordinating issues with Mexico (that might or might not entail real interference concerns) might cause the Commission to retain KABC-TV's current DTV assignment, despite the harms that would result once KABC-TV begins its digital operations on Channel 8 in November of this year. Because KABC-TV is subject to this early build-out date, failure to resolve KABC-TV's short-spaced, co-channel situation with KFMB-TV would put Midwest in a terrible position. KABC-TV's digital operations would subject KFMB-TV to immediate, irreparable harm. Therefore, if KABC-TV is not granted an alternative DTV assignment on reconsideration (now scheduled to be voted on at the January 29 FCC meeting), Midwest likely would feel compelled -- out of fundamental self-preservation -- to seek immediate relief blocking the construction and operation of KABC-TV's Channel 8 DTV facility until the interference issue is resolved. Unfortunately, because remedying this short-spaced, co-channel situation would require

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KABC-TV to be assigned one of the DTV channels currently assigned to certain other stations in the southern California region, Midwest might also be required to seek relief with respect to those assignments as well.

We understand that you are continuing to seek a viable solution to our situation, and appreciate the attention you already have given to our problem. Like you, we are committed to a fast DTV roll-out, both for our stations and for the broadcasting industry as a whole. Midwest has long been a supporter of quick DTV implementation, and we are eager to implement our own DTV operations rapidly. We would very much regret taking any action to hold up this process, but strongly believe that the loss of existing service to up to 25% of our viewers is too heavy a price for the public to pay.

\* \* \*

We now understand that the staff is concerned about DTV allotments/assignments in the southern California region that might raise coordination issues with Mexico, and, because of possible time delays, this concern is particularly acute in the case of early build-out stations, like KABC-TV. (Memorandum of Understanding with Mexico, April 2, 1997 specifying a "coordination distance" of 275 km). *See also* Table A (describing 273 km as an "upper boundary"). One solution to this predicament is to assign KABC-TV a DTV channel, such as Channel 42 suggested in Broadcasters' November 20 *ex parte* Improvements filing, that does not trigger a Mexican coordination issue.

But, it is argued, that might mean that some other southern California station would receive a DTV allotment/assignment that would raise this Mexican coordination issue. We urge that this contingency is far preferable to assigning DTV Channel 8 to KABC-TV if that other station has a later build-out date and is farther north than KABC-TV and therefore, would be more readily able to resolve the coordination issue with Mexico. After all, there is mountainous terrain between Los Angeles and Mexico, some of the Mexico allotments to be protected have not been constructed and some stations north of Los Angeles have smaller service areas to replicate than KABC-TV. For all of these reasons, the other stations should be better positioned to reach an accommodation with Mexico that would not entail undue delay.

Some concern has been expressed by the Commission's staff that it cannot or should not devise "creative" DTV allotments/assignments in the Southern California area, but it is confined to the specific DTV channel suggestions on the record. We respectfully submit that Midwest and others have raised these issues with sufficient specificity and that the Commission has ample authority to design a "creative solution" along the above lines or otherwise.

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In any event, if KABC-TV were forced to activate a DTV Channel 8 facility on November 1, resulting in loss of existing KFMB-TV service to tens of thousands or even hundreds of thousands of residents, that result would give DTV a terrible black eye and impede, not expedite, DTV implementation. (A public outcry is particularly likely during the San Diego Chargers football season since hundreds of thousands of viewers rely on KFMB-TV for this sports coverage.) Accordingly, the Commission should explore every means possible to devise a solution to the southern California problem that is more consistent with the public interest than the DTV Channel 8 assignment to KABC-TV.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'J. Blake', with a long horizontal flourish extending to the right.

Jonathan D. Blake  
Jennifer A. Johnson

*Counsel for Midwest Television, Inc.*

cc: Commissioners  
Mr. Roy Stewart  
Mr. Bruce Franca  
Ms. Magalie Roman Salas (2 copies)